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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

YAO, SAMCHUAN CUA

ART UNIT PAPER NUMBER

1733

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/774,177

Applicant(s)

DROUX, MICHEL

Examiner

Sam Chuan C. Yao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1448 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 17-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolen et al (US 3,936,558) for reasons of record set forth in numbered paragraph 7 in a prior office action dated 12-15-03.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolen et al (US 3,936,558) as applied to claim 22 above for reasons of record set forth in numbered paragraph 9 in a prior office action dated 12-15-03.

This alternative rejection is made in the event that, a binder in powder form and in liquid form recited in this claim distinguish over binder particles in a liquid dispersion medium taught by Bolen et al.

Response to Arguments

5. Applicant's arguments filed on 04-12-04 have been fully considered but they are not persuasive.

Counsel argues on page 9 full paragraph 2 that, "[i]n the Bolen et al reference, all of the layers of strands are provided on the conveyor (61), and then binder is applied to all the layers.". Based on this fact, Counsel concluded that, "all of the layers of strands are subject to opening, regardless of whether the opening of any individual layer is subject to an opening to a different degree than any other layer". Accordingly, the presently recited claims are not anticipated by Bolen et al reference, since the claims now requires "at least one second layer of at least one intact strand formed of filaments which are held together within the strand and are not opened.". While it is true in a process taught by Bolen et al that, all of the layers of strands are provided on the conveyor (61), and then binder is applied to all the layers.", Examiner strongly disagrees with Counsel's conclusion. One in the art reading the Bolen et al patent as a whole would have reasonably recognized and understood that, Bolen et al contemplates forming a multi-layered fibrous mat wherein at least one of the strand layers in the mat comprises "at least one intact strands formed of filaments which are held together within the strand that are not opened" as evidence from the following passages:

- a) "One of the layers has filaments of the strands therein at least partially dispersed to form a mesh size which entraps binder particles therein which

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have a mesh size larger than the mesh size of the dispersed filament layer, ... a fibrous body having variable mesh sizes or characteristics by **selectively filamentizing strands** or a layer of strands already in place in **a mat-like collection of strands** ... The strands in **one of the layers** are opened to separate the filaments of the strands from each other and change the mesh size of that layer to mechanically entrap binder particles therein.” (emphasis and bold-face added; abstract);

- b) “In situation where only a small amount of binder particles are desired in layers of the mat-like mass which **do not have dispersed filaments**, a number of different approaches could individually or in combination be used. Only binder particles of a size that would be entrapped by the dispersed filaments could be used. (emphasis bold-face added; col. 6 lines 58-63);
- c) “The liquid strand dispersing phase of the binder can serve at least three functions. ... third, it **can disperse the filaments of the strands in one of the layers of the mat-like mass**.” (emphasis and bold-face added; col. 7 lines 33-34);
- d) “When the product must rapidly gain entrance to the central body portion of the mat through one of the surfaces, then it is preferred that **the bottom layer of strands are not filamentized** so that the matrix may be more easily admitted to the mat.” (emphasis and bold-face added; col. 8 lines 2-15);
- e) “The purpose of the soaking section is to **break down any bonds or other forces that may be holding filaments together in strand form in the layer or**

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layers that are to be filamentized." (emphasis and bold-face added; col. 17

lines 64-68); and,

- f) *"Whether **filamentized or not**, the bottom layer at least provides substantially more intersections to filter some binder out ..."* (emphasis and bold-face added; col. 18 lines 64-67).

Note: Where ... the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. **Whether the rejection is based on "inherency" under 35 USC § 102, on prima facie obviousness" under 35 USC § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art products."** In re Best, 562 F2d 1252, 1255, 195 USPQ 430, 433-4 (CCPA 1977).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

Scy
05-28-04